

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO.: 1:23-cv-21347-JEM

MIAMI SLICE PIZZA, LLC, a Florida
limited liability company,

Plaintiff/Counter-Defendant,

v.

CARNIVAL CORPORATION, a Florida
corporation

Defendant/Counter-Plaintiff.

_____ /

MIAMI SLICE’S ANSWER TO FIRST AMENDED COUNTERCLAIM

Plaintiff/Counter-Defendant Miami Slice Pizza, LLC (“Miami Slice”), by and through undersigned counsel, hereby files its Answer to Defendant/Counter-Plaintiff Carnival Corporation’s (“Carnival”) First Amended Counterclaim [D.E. 12].

PARTIES

1. Admit.
2. Admit.

JURISDICTION AND VENUE

3. Miami Slice admits that this purports to be an action for cancellation of a trademark registration, but otherwise denies the allegations of this paragraph.

4. Admit.
5. Admit.
6. Admit.

BACKGROUND

7. Miami Slice admits that it has alleged that Carnival infringes its mark MIAMI SLICE, but otherwise denies the allegations of this paragraph.

8. Admit.

9. Admit.

10. Deny.

11. Deny.

12. Deny.

COUNT I

13. Miami Slice repeats and realleges its answer to paragraphs 1 through 12.

14. Deny.

15. Deny.

16. Deny.

17. Miami Slice admits that these appear to be screenshots from its website and that Miami Slice uses the term “slice bar” in conjunction with its physical, restaurant location, but otherwise denies the allegations of paragraph 17.

18. Miami Slice admits that this appears to be a graphic published through its Instagram account that provides its customers with instructions on how to properly reheat pizza sold by MIAMI SLICE to enjoy the best experience, but otherwise denies the allegations of paragraph 18.

19. Deny.

20. Deny.

21. Deny.

AFFIRMATIVE DEFENSES

Miami Slice denies that Carnival is entitled to the relief it seeks in its prayer for relief, and further asserts the following affirmative defenses.

First Affirmative Defense

Carnival fails to state a claim upon which relief can be granted. Miami Slice's federal registration entitles it to a presumption that MIAMI SLICE is a protectible, non-generic mark, and Carnival has failed to plausibly plead that "Miami Slice" is generic for "Miami-style pizza." First, there is no plausibly pled definition of "Miami-style" considering that the exhibits of the Counterclaim contradict one another. *See* pg. 11 (screenshots of "Miami Style Pizza" as "thick doughy crust" topped with [excessive] mozzarella cheese); *compare* pg. 12 ("Miami-style" having "a uniformly thin crust"); *compare also* pg. 13 (Big Cheese screenshot showing "The Miami Slice" as having no mozzarella). Second, the Counterclaim fails to plausibly plead that consumers believe "Miami Slice" to be synonymous with "Miami-Style Pizza." Again, the contradictory nature of the exhibits call into question whether "Miami Slice" could plausibly be equated with any style of pizza, yet alone a supposedly specific "Miami-style" of pizza, whatever that means. Finally, Carnival's claim of genericness belies other well-known, legally protectible marks such as CALIFORNIA PIZZA KITCHEN. *See* Exhibit B, at 10 (identifying "California Style Pizza" as a type of pizza).

Second Affirmative Defense

Miami Slice asserts that Carnival has unclean hands because, on information and belief, it willfully began infringing Miami Slice's MIAMI SLICE mark with full knowledge of Miami Slice's rights to same.

PRAYER FOR RELIEF

WHEREFORE, Miami Slice prays that the Court enter judgment in its favor on all claims

alleged in the Counterclaim and award Miami Slice its reasonable attorneys fees and costs, and grant Miami Slice such further relief as the Court deems appropriate.

Date: August 9, 2023

Respectfully submitted by,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail on August 9, 2023 on all counsel or parties of record via CM/ECF filing.

/s/ A. Robert Weaver

A. Robert Weaver